

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**CYBERONICS, INC.,**

**Plaintiff,**

**v.**

**WELLS FARGO BANK,  
NATIONAL ASSOCIATION,  
AS TRUSTEE UNDER INDENTURE**

**Defendant.**

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**CIVIL ACTION NO. 07-121**

**NOTICE OF WITHDRAWAL OF REQUEST FOR ATTORNEYS' FEES**

Plaintiff/Counter-Defendant Cyberonics, Inc. ("Cyberonics") respectfully files this notice of withdrawal of its request for attorneys' fees under the Texas Declaratory Judgment Act, TEX. CIV. PRAC. & REM. CODE §37.009.

When Cyberonics filed its Original Petition in the District Court for Harris County, Texas, it properly included a request for attorneys' fees as provided for in the Texas Declaratory Judgment Act. Following this Court's declaratory judgment in favor of Cyberonics, the Court ordered Cyberonics to submit an affidavit in support of its request. After further consideration and discussions with opposing counsel, Cyberonics has decided to withdraw its request that the Court grant its attorneys' fees. Accordingly, Cyberonics respectfully files this notice of withdrawal.

RESPECTFULLY SUBMITTED,

s/ N. Scott Fletcher

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N. Scott Fletcher

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**COUNSEL FOR PLAINTIFF/COUNTER-DEFENDANT CYBERONICS, INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that I caused the foregoing documents to be served on all counsel of record via Electronic Filing System on July 2, 2007.

s/ N. Scott Fletcher

N. Scott Fletcher

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